

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

913. CIVIL REVISION APPLICATION No. 226 of 2017

Ashok S/o Prabhuling Bhalwane
age major occupation agriculture
R/o Washi Taluka Washi District Osmanabad
...Petitioner

VERSUS

1. The State of Maharashtra
Through : The Collector/Deputy Collector,
Land Acquisition Medium Project No.2,
Collector Office, Osmanabad
2. The Executive Engineer,
Irrigation Department at Osmanabad
Taluka and District Osmanabad
3. The Special Land Acquisition Officer No.2,
Land Acquisition Office, at Osmanabad
Taluka and District Osmanabad
...Respondents

WITH

914. CIVIL REVISION APPLICATION No. 232 of 2017

Shesherao Kalyanrao Chede
age major occupation agriculture
R/o Washi Taluka Washi District Osmanabad ...Petitioner

VERSUS

1. The State of Maharashtra
Through : The Collector/Deputy Collector,
Land Acquisition Medium Project No.2,
Collector Office, Osmanabad
2. The Executive Engineer,
Minor Irrigation Division, Osmanabad
Taluka and District Osmanabad
...Respondents

WITH
915. CIVIL REVISION APPLICATION No. 233 of 2017

1. Pandit S/o Kalyanrao Chede,
age major occupation agriculture
R/o Washi Taluka Washi District Osmanabad
2. Baburao S/o Kalyanrao Chede,
age major occupation & R/o as above. ...Petitioners

VERSUS

1. The State of Maharashtra
Through : The Collector/Deputy Collector,
Land Acquisition Medium Project No.2,
Collector Office, Osmanabad
2. The Executive Engineer,
Minor Irrigation Division, Osmanabad
Taluka and District Osmanabad ...Respondents

Mr. Estling S. Murge, Advocate for petitioners in all petitions.

*Mr. S.N. Kendre, Asstt. Govt. Pleader for respondents in
C.R.A. No 226/2017*

*Mr. G.O. Wattamwar, Asstt. Govt. Pleader for respondents
in C.R.A. No 232/2017*

*Mr. S.B. Pulkundwar, Asstt. Govt. Pleader for respondents
in C.R.A. No 233/2017*

CORAM : SUNIL P. DESHMUKH, J.

DATE : 22nd February, 2019

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith and heard finally
with consent of learned advocates for the appearing parties.
2. Indisputably lands of the applicants have been

acquired by the respondents for construction of Pimpalgaon (Lingi) Major Irrigation Project at village Washi District Osmanabad and notification under section 4 of Land Acquisition Act was published in Government Gazette on 3rd August, 2001 and final award came to be passed on 19th July, 2007. The applicants had withdrawn the amount of compensation under protest. Since the special land acquisition officer had granted very meagre compensation, respective applicants had filed reference, seeking enhancement of compensation. The applicants submitted reference petitions under section 18 of the Land Acquisition Act within the prescribed period of limitation with respondent No.1, however, at that time the applicants could not pay requisite court fees along with the applications for reference.

3. It is contended that Deputy Collector, Land Acquisition, instead of referring the applications to the civil court, has rejected those on the ground of non payment of requisite court fees and non submission of copy of award under communication dated 31st March, 2016. It is the contention of the applicants that land acquisition officer has no power or authority to reject the reference applications. Those ought to have been forwarded to the reference court for adjudication. As such, the applicants are before this court in present civil revision

applications.

4. Learned advocate for the applicants submits, as such, action of the Deputy Collector, Land Acquisition in rejecting reference applications of the applicants on the ground of non payment of requisite court fees is without any authority in law.

5. Learned advocate for the applicant has relied on judgments of the Supreme Court viz., “*Kashi Ram Namdeo V/s State of Maharashtra*” [1996 (1) Mh.L.J.652 : 1997 (Supp) Bom. C. R 781 (SC)] and “*Sau. Pushpadevi Giridharlal Agrawal and Another V/s State of Maharashtra and others*” [2004 (supp) Bom.C.R. 934 (NB) : 2004 (1) LACC 326]. Citing said judgments, learned advocate for the applicants has contended that section 18 (2) of the Land Acquisition Act requires making application to Collector and in turn the Collector is required to refer the same to the civil Court. Learned advocate for the applicants has also referred to a judgment in the case of “*Sambhaji Manaji Chate and Another V/s State of Maharashtra and Another*” [2003 (2) Mh.L.J. 661] submitting that in similar situation, Division Bench of this court had allowed objection filed by the claimants and had directed the authority to remit reference and further time was granted to the claimants to pay requisite court fees.

6. Learned advocate for the applicants, on instructions, states that the applicants / claimants would not claim interest on

the delayed period from 31st March 2016 to date of filing applications i.e. 25th September 2017, in case compensation is enhanced by the reference court.

7. On the other hand, learned Assistant Government Pleader has submitted that it was necessary for the claimants to pay requisite court fees, since there is no exemption from payment of court fees. Learned Asstt. Govt. Pleader invites attention to the judgment of the Supreme Court in the case of “*Kashi Ram*” (*supra*) to submit that the Supreme Court has clarified that the judgment shall not be construed to mean that it had overriding effect on Article 15 of Schedule 1 to the Act. It is submitted that it was essential for the claimants to pay requisite court fees at the time of submitting application. As such, according to learned Asstt. Govt. Pleader, respondent No. 1 has rightly rejected the reference application submitted by applicants.

8. Upon considering the submissions advanced on behalf of the parties, it appears, though no court fees is paid by the claimants, yet, once necessary conditions as contemplated under section 18 of the Act are complied with, it is obligatory on the part of the concerned authorities to forward application to reference court. Division Bench of this Court in the case of

"Sambhaji" (*supra*) in paragraph No. 9 has observed, thus -

“ 9. On perusal of section 18 of the Land Acquisition Act, it is seen that section 18 (1) entrusts to the SLAO a statutory duty to make reference on the fulfillment of the conditions laid down therein. Hence once the necessary conditions under section 18 have been complied with by the applicant / petitioners, the S.L.A.O. ought to have forwarded the reference. A written application makes it incumbent on the Collector to make a reference provided that the necessary conditions are fulfilled. The four essential requisites for reference under section 18 are :

(a) The reference is to be asked for by the party aggrieved not accepting the award or has accepted the award under protest.

(b) It must be an application in writing with a request to make a reference.

(c) It should contain the grounds of objection in clear terms.

(d) The application was made within time.”

9. From observations of the Division Bench in paragraph No. 9 as quoted above, it is clear that once the claimants have complied with all essential requisites, concerned authority is bound to forward reference to civil court, by giving some time to claimant for removing deficiencies regarding payment of court fees, either before it or before the reference court. Division Bench in paragraph No. 10 of aforesaid judgment has referred to that clarification given by the Supreme Court in the case of "*Kashi Ram*" (*supra*) and held that the applicants are required to pay court fees, however, the same can be remitted / deposited even before

the reference court and therefore, it is appropriate for the special land acquisition officer to forward the same to civil court. In paragraph No. 11 of aforesaid judgment, the Division Bench has directed the authorities to make reference to civil court and in that case three months' time was granted to the applicants to pay amount of court fees.

10. In the facts and circumstances of the case and in view of above, order dated 31st March, 2016 passed by Deputy Collector (Land Acquisition) (Medium Project) No.2, Osmanabad, rejecting reference application of the applicants is quashed and set aside. Respondent No. 1 to remit reference applications to civil court within a period of four weeks from the date of receipt of writ of this order. Court fees shall be paid by the applicants within a period of three months from the date of receipt of writ of this court to the reference court. It is made clear that unless such compliance is made, references shall not be registered.

11. The civil revision applications, as such, stand allowed. Rule is made absolute in aforesaid terms.

12. In case compensation is enhanced by the reference court, the statement made on behalf of the claimants with respect to waiver of interest for delayed period should be taken into

account.

13. Applicants to file undertaking to the effect that they would not claim interest over the delayed period, in case compensation is enhanced, before the reference court, within a period of four weeks from the date of receipt of writ of this order by the reference court.

**(SUNIL P. DESHMUKH)
JUDGE.**

Madkar